

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	No. 13-10200-GAO
	)	
DZHOKHAR A. TSARNAEV, also	)	
known as Jahar Tsarni,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

**STATUS CONFERENCE**

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Wednesday, June 18, 2014  
10:01 a.m.

Marcia G. Patrisso, RMR, CRR  
Official Court Reporter  
John J. Moakley U.S. Courthouse  
One Courthouse Way, Room 3510  
Boston, Massachusetts 02210  
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

## 1 APPEARANCES:

2 OFFICE OF THE UNITED STATES ATTORNEY

3 By: William D. Weinreb, Aloke Chakravarty and

4 Nadine Pellegrini, Assistant U.S. Attorneys

5 John Joseph Moakley Federal Courthouse

6 Suite 9200

7 Boston, Massachusetts 02210

8 On Behalf of the Government

9 FEDERAL PUBLIC DEFENDER OFFICE

10 By: Miriam Conrad, Esq.

11 Timothy G. Watkins, Esq.

12 51 Sleeper Street

13 Fifth Floor

14 Boston, Massachusetts 02210

15 - and -

16 CLARKE &amp; RICE, APC

17 By: Judy Clarke, Esq.

18 1010 Second Avenue

19 Suite 1800

20 San Diego, California 92101

21 - and -

22 LAW OFFICE OF DAVID I. BRUCK

23 By: David I. Bruck, Esq.

24 220 Sydney Lewis Hall

25 Lexington, Virginia 24450

On Behalf of the Defendant

## P R O C E E D I N G S

THE CLERK: All rise.

(The Court enters the courtroom at 10:01 a.m.)

THE CLERK: The United States District Court for the District of Massachusetts. Court is in session. Be seated.

For a status conference in the case of United States versus Dzhokhar Tsarnaev, Docket 13-10200. Will counsel identify yourselves for the record, please.

MR. WEINREB: Good afternoon, your Honor. William Weinreb for the United States.

MR. CHAKRAVARTY: As well as Aloke Chakravarty, your Honor.

MS. PELLEGRINI: Nadine Pellegrini, your Honor.

MS. CLARKE: Judy Clarke, Miriam Conrad, David Bruck and Timothy Watkins on behalf of Mr. Tsarnaev, whose presence has been waived.

THE COURT: Good morning.

Thank you for your status report. There are a number of items to be addressed. I have my list. I think we'll start with old business, and that relates to the defense objections to the arrangements at Devens for family visits under the SAMs. I don't know -- well, I guess I need to be brought up to date as to what controversy there continues to exist or not.

Mr. Bruck?

MR. BRUCK: If it please the Court, the only

1 outstanding matter is our request that legal visits with a  
2 member of the defense team and the defendant's sisters be  
3 treated as legal visits, which is to say confidential. We  
4 explored that last time.

5 The government made a proposal to have a fire-walled  
6 person present in the room. We object to that and think that  
7 the inclination expressed by the Court, although there was no  
8 final ruling, is the way it should go, that these simply are  
9 legal visits with cleared members of the defense team. There  
10 has been no showing of any security reason whatsoever why those  
11 visits can't be private. They need to be in order for their  
12 purpose to be accomplished. And we would ask that the Court so  
13 rule.

14 That's the only outstanding matter.

15 THE COURT: How many such visits have there been since  
16 our last conference?

17 MR. BRUCK: Since our last one, I think one.

18 MS. CONRAD: Two.

19 MR. BRUCK: I'm sorry. Two. Excuse me.

20 And there have been problems. I mean, it has  
21 not -- we have not been able to accomplish the work that -- as  
22 we think it needs to be accomplished under these conditions.

23 THE COURT: Well, is it just a matter of  
24 inconvenience?

25 MR. BRUCK: No, it's a matter of having an FBI agent

1 sitting and taking notes and listening to everything that's  
2 said.

3 THE COURT: He's not there when you're there without  
4 the sisters?

5 MR. BRUCK: He is not there when we're there without  
6 the sisters. That's correct. And if the sisters had a purely  
7 social visit where there was no member of the defense team and  
8 no defense work going on, that would be a different matter.  
9 But those have not been the conditions. And we need the  
10 sisters to work with us and our client on legal matters, and to  
11 confer in a protected confidential setting. And that's why we  
12 made the motion. We think these are legal visits and we think  
13 they should be treated like any other legal visit.

14 THE COURT: Ms. Pellegrini?

15 MS. PELLEGRINI: Your Honor, as the government  
16 suggested in its proposal, we agreed that we would wall off and  
17 have essentially a taint agent. In the interim since the  
18 government filed that proposal, there has also been discussions  
19 between the defense and the government regarding a potential  
20 agreement where there would be a further walling off, if you  
21 will; that is, that the agent would only communicate with an  
22 assistant United States attorney who is not part of the  
23 prosecution team. And there would only be discussions with the  
24 prosecution team if by a preponderance of the evidence the  
25 taint agent and the taint AUSA felt that there would be a

1 violation of the SAMs. Other than that, we received no  
2 information.

3 The government believes that that suffices for both  
4 the concerns on the defense and for the government. As the  
5 government reiterated again in its proposal, we do have  
6 concerns about what we call a mixed social and legal visit,  
7 which has previously not been recognized by BOP and which is  
8 not recognized under the SAMs, and so we've taken steps to  
9 address those concerns by walling off both the agent and the  
10 government.

11 THE COURT: Okay. I think the government's proposal  
12 as amended is satisfactory. And so you will put that  
13 into -- including the addition of a fire-walled AUSA --

14 MS. PELLEGRINI: AUSA.

15 THE COURT: -- from another district?

16 MS. PELLEGRINI: We hadn't discussed where that person  
17 would come from. That's possible, your Honor. We could do  
18 that if the Court so --

19 THE COURT: You could get somebody from New Hampshire  
20 or Rhode Island or someplace like that.

21 MS. PELLEGRINI: Certainly.

22 THE COURT: Okay.

23 MR. BRUCK: If I may make one last comment.  
24 Obviously, we will do what we can to do our mitigation work and  
25 investigation under those conditions, but we can't promise that

1 we may not apply to the Court for further relief depending on  
2 how it goes.

3 THE COURT: Okay.

4 MR. BRUCK: Thank you.

5 THE COURT: The defense also has filed a motion for a  
6 hearing regarding public comments and what the defense  
7 characterizes as "leaks." I don't know who wants to address  
8 that.

9 Let me just say I saw both interviews in real time  
10 when they occurred and I was not very happy about it. I  
11 thought they were completely unnecessary opportunities for the  
12 communication of information which would be inappropriate from  
13 active members of the prosecution team. I recognize the  
14 government's position that neither DesLausriers nor Douglas  
15 were at the time employed by the government.

16 I do think that the prosecution has practical, if not  
17 legal, control over them. And I expect that the government  
18 will remind people involved in the case, even formerly, of  
19 their responsibility to the integrity of the trial. I don't  
20 know whether either of those people were intended to be -- or  
21 are intended to be government witnesses?

22 MR. WEINREB: No, your Honor.

23 THE COURT: But if you have not done so, you should  
24 communicate to them that it is unwise for them to -- and for  
25 anybody else in their position to engage in similar interviews.

1           With respect to the prospect of having a hearing on  
2     the matter, I actually think that would make things worse  
3     rather than better, and I think it is better left as it is,  
4     with the government reminding everyone on its team, and  
5     formerly on its team, of the sensitivity of the matter and the  
6     obligations under our local rules to avoid comment on any of  
7     the aspects of the case. Yes.

8           MS. CLARKE: Your Honor, thank you for that  
9     admonition. The problem is without the Court actually weighing  
10    in -- and I understand the Court's concern about, you know, the  
11    hearing and what it would bring out. But to admonish  
12    government counsel to admonish people that they've already  
13    admonished by way of that document that we attached to our  
14    reply I don't think does it.

15          THE COURT: Well, they've now heard what I've said as  
16    well.

17          MS. CLARKE: Well, and I just wonder if a Court order  
18    is the way to go because there's got to be some sense of  
19    sanctions that people would face if they are exposed to  
20    continue the conduct or to violate the Court's order.

21          There's been, you know, a high level of rhetoric which  
22    will -- the prosecution team has not been able to stop, and I  
23    think the Court weighing in would be the next necessary step.

24          THE COURT: I don't think a formal order would add  
25    that much. If something happens that it's similar, with or



1 without a formal order I can take appropriate action.

2 MS. CLARKE: I think the sanction power of the Court  
3 is important to us.

4 THE COURT: I understand.

5 There are two motions related to jury matters. The  
6 defense moved for access to the instructions given to the grand  
7 jury. I reviewed the papers on that. That motion is denied  
8 essentially for the reasons argued by the government.

9 There is also a defense motion for access to jury  
10 selection materials. And that motion will be granted and we  
11 will issue an order that slightly amends the draft order that  
12 the defense submitted. We have been working with our jury  
13 clerk to get the best information that is possible to get off  
14 the systems, and he is working -- I checked with him within the  
15 hour to see what his progress was. It is a big job, I should  
16 say.

17 He told me that with respect to one of the requests,  
18 he spent essentially full time for the last five and a half  
19 days going through records to essentially remove personal  
20 identifying information. He's mostly done with that, and I  
21 expect that we will be able to issue an order and grant access  
22 to the materials that we have shortly, I hope within a few  
23 days.

24 Some of the material does not exist as requested, but  
25 we'll give you the best -- the clerk will give you the best

1 information that is available and practical subject, of course,  
2 to the privacy concerns with respect to the individual juror  
3 identification.

4 There are several motions to suppress. Let me ask  
5 first about the motion to suppress statements. I see from the  
6 status report that -- I think it indicated the parties were in  
7 agreement that there would need to be an evidentiary hearing.  
8 I had thought that the government's position was that it wasn't  
9 offering any of the statements so no hearing was necessary.

10 MR. WEINREB: Your Honor, we have stipulated that we  
11 will not offer any of the statements in our case in chief, but  
12 we did also state that we would use the statements for  
13 impeachment purposes or in rebuttal if the defendant offered  
14 statements. And if they were, in fact, involuntary in the  
15 constitutional sense, that wouldn't be permitted. So --

16 THE COURT: Right. I think we can defer on that until  
17 the time that that occurs. In other words, if during -- we  
18 could have a hearing on suppression during the course of the  
19 trial if impeachment or rebuttal appears to be a prospect.

20 MR. WEINREB: We agree.

21 THE COURT: Okay. So I think we can pass on that  
22 motion for now, it being clear that the government will not  
23 offer any of the statements in its case-in-chief.

24 As to the other motions, I think -- I'm not  
25 sure -- the briefing is complete yet. I think there may be

1 some replies coming. We'll assess that. I'm not sure yet  
2 whether a hearing will be necessary. The papers are pretty  
3 complete. If there is a hearing necessary, we'll set it up.  
4 But it will not -- it will be an argument on the papers, I  
5 would think.

6 MS. CONRAD: Well, your Honor, I'll address this in  
7 the reply -- excuse me. But I think there may be some issues  
8 that would require an evidentiary hearing, particularly with  
9 respect to standing abandonment and any -- the extent to which  
10 the search exceeded the scope of the warrant.

11 THE COURT: All right. Well, that will appear from  
12 the papers and that will be part of what I'll consider.

13 I have reviewed the papers on the defense motion to  
14 strike the aggravating factor that relies on a formulation of  
15 betrayal of the United States, and I agree with the defense  
16 position that it was unduly prejudicial and I will strike that.  
17 I do that under the authority of 3593(c), I think, which I read  
18 as an analog to Rule 403.

19 I think to draw a distinction between naturalized and  
20 natural born citizens is highly inappropriate. Only the former  
21 take an oath, and I think to invite the jury to consider that  
22 as a factor would be very inappropriate. And I think that both  
23 formulations are finned in that respect, both the original and  
24 the proposed. I think the government has -- the aggravating  
25 factors that are not obnoxious, in that sense, are adequate to

1 the government's purpose.

2 So I think the big topic for the morning is  
3 scheduling. And we have to talk about a couple of matters:  
4 One is 12.2, notice; one is reciprocal discovery; and one is  
5 expert discovery that is not implicated under 12.2. There are  
6 two kinds of experts, I guess.

7 Somewhere -- I guess it was in the government's prior  
8 submitted proposed schedule of dates -- the government had  
9 suggested that it would make affirmative expert disclosures on  
10 June 30th. I don't know whether that still is a date the  
11 government expects to meet. I know that the date was suggested  
12 some time ago.

13 MR. WEINREB: Your Honor, we're actually still aiming  
14 for that date. We'd like the leeway to be able to slip it  
15 perhaps a week, if necessary, but we have the materials. We  
16 are actively at work. It's a lot of materials, but we simply  
17 need to process them, Bates stamp them, get them ready for the  
18 defense and hand them over with respect to the areas of  
19 discovery specified in the -- in our proposal, which was  
20 ballistics, fingerprint, blood and DNA.

21 THE COURT: And what did you mean to exclude by that  
22 list?

23 MR. WEINREB: Well, there are potential other experts  
24 that would be on, for example, aspects of terrorism or experts  
25 that might help the jury understand terms in the note that the

1 defendant left in the boat; experts relating to the harm that  
2 the defendant caused. I don't want to get too specific now  
3 because we're still investigating it and still formulating it,  
4 but they would be --

5 THE COURT: This is for the first phase?

6 MR. WEINREB: -- non-forensic experts.

7 It would mainly be for the sentencing phase but also  
8 potentially for the first phase.

9 Your Honor, as the Court -- if I can just return for a  
10 moment, one of the significances of alleging something is an  
11 aggravating factor is that it creates the opportunity for the  
12 government to put in evidence on a particular topic. And the  
13 Court is obviously mindful of that because it just said that  
14 you believe that the other aggravating factors create the room  
15 for the admission of such evidence.

16 I just want to emphasize, though, that the defense has  
17 made clear in this case that motive is going to be central to  
18 its mitigation phase. The last time we were here Mr. Bruck  
19 said why Mr. Tsarnaev committed these crimes is going to be the  
20 central issue that they will pursue in mitigation. And our  
21 theory is that he committed those crimes, in part, to aid  
22 America's enemies, to provide aid and comfort to those who are  
23 planning violence against the United States. That was the gist  
24 of our reformulated version of the aggravator that attempted to  
25 separate out the naturalization piece as much as possible.

1           We believe that evidence is still appropriately  
2       admissible under the heading of motive. And motive is an issue  
3       both at the trial and at sentencing. So the experts who we're  
4       discussing could be offered during the trial phase, it could be  
5       offered during the sentencing phase, especially because the  
6       jury is permitted during the sentencing phase, if there is one,  
7       to consider the evidence that was admitted during the trial.

8           THE COURT: Well, that, I guess, raises the broader  
9       question which we once visited which is whether we schedule  
10      separately for Phase 1 and Phase 2 with respect to some of  
11      these matters.

12          MR. WEINREB: We believe that makes no sense.

13          THE COURT: Right. I know you said that. But what  
14      you just said seems to be inconsistent with that. That's what  
15      I -- I know that's the path we took --

16          MR. WEINREB: In other words, the government --

17          THE COURT: -- at the defense's urging really.

18          MR. WEINREB: All expert discovery should be complete  
19      before the trial begins, and it needs to be that way because  
20      there isn't going to be a break between the trial and  
21      sentencing.

22          THE COURT: So then when would you propose the  
23      non-technical experts, if it --

24          MR. WEINREB: August 4th.

25          THE COURT: Which is the same date as is in the --

1 MR. WEINREB: Yes. The only thing I was emphasizing  
2 before was that the discovery that we're ready to produce now  
3 is the forensic expert discovery, essentially. The  
4 non-forensic expert discovery is what we propose to delay until  
5 August 4th.

6 MR. CHAKRAVARTY: Just with the clarification that a  
7 computer and some other technical experts we might also need  
8 some more time for, your Honor, just to do a full,  
9 comprehensive analysis. So I'm thinking like linguistics, a  
10 geolocation expert, computer forensics to say this is material  
11 that was removed from the computer and analyzed. That the  
12 exhibits themselves will have been turned over but not the full  
13 expert reports, to the extent there is going to be one.

14 We can obviously disclose the qualifications and the  
15 type of testimony, as we would typically do in a 702 type  
16 disclosure.

17 THE COURT: So the real date then is August, I guess,  
18 for the interesting experts.

19 MR. CHAKRAVARTY: Well, just on that point, your  
20 Honor, none of that, I submit, is going to be surprising to the  
21 defense. As to information on key pieces of digital evidence,  
22 for example, on the defendant's computer, neither his location  
23 at certain times will be surprising; in fact, some of that  
24 material, the data we turned over.

25 The forensic reports of the analysis of different

1 substances that may have been found on pieces of evidence, that  
2 is information that the defense hasn't had time for, and that  
3 is precisely the type of information that we have accelerated  
4 to try to get to them by the end of the month, or shortly  
5 thereafter, so that they can actually digest -- so that is  
6 actually going to be the new -- the non-controversial evidence  
7 is going to be the evidence that -- with the exception of a  
8 so-called terrorism expert or somebody who is going to  
9 interpret the meaning of certain terms, the vast majority of  
10 the surprises are going to be, for lack of a better phrase, are  
11 going to be produced soon.

12 THE COURT: And I guess to the defense now. I expect  
13 that there will be expert evidence certainly in a Phase 2. Do  
14 you anticipate Phase 1 experts?

15 MS. CLARKE: Yes. And while I'm standing, Judge, I  
16 notice noticeably missing from the discussion, anyway, is  
17 explosives, materials, handwritings, residue, chemicals, cell  
18 tower, GPS. These are the kinds of experts that it appears the  
19 government would be selecting from. I can't imagine that we're  
20 omitting explosives in this case as an area of expertise.

21 MR. CHAKRAVARTY: Yeah, that's -- this is not an  
22 exhaustive list, your Honor, of the materials that the FBI  
23 Quantico lab has done and the state police crime lab has done.  
24 To the extent those are complete, those reports, then we intend  
25 to turn those over by the end of the month or shortly



1       thereafter. We have just received a number of them, and you'll  
2       get those promptly.

3               The ones that we don't have include the geolocation,  
4       which is the cell tower analysis, and the computer forensics,  
5       because those are not done necessarily out of the Quantico lab,  
6       your Honor.

7               THE COURT: Yeah, I don't -- I guess when the -- if it  
8       proceeds this way, when the production's made in a couple of  
9       weeks, you'll know what the first batch is and you'll know what  
10      is not there, and that will be the second batch, I guess, on  
11      the proposal.

12              So to come back to the question. If the government is  
13      proceeding in two steps, perhaps the defense could too, and I  
14      wonder if it could be separated by Phase 1 and Phase 2.

15              MS. CLARKE: I think that's what we recommended,  
16      essentially, in our proposal, was -- because we're responsive,  
17      Judge, to them --

18              THE COURT: Well, not necessarily.

19              MS. CLARKE: In the guilt phase we're largely  
20      responsive to them. In the penalty phase we're slightly more  
21      affirmative, I think. But our work is not going to be done  
22      soon.

23              THE COURT: I guess that's what I -- I was getting  
24      more at affirmative expert disclosure but I see that there may  
25      be a difference in the phases that -- because the first phase

1 the defense is essentially responsive to the government's case.

2 MR. WEINREB: Your Honor, if I may have permission to  
3 interrupt for one moment. I don't think that the two dates  
4 that we listed should be mistaken for Phase 1, Phase 2.

5 THE COURT: I understand that.

6 MR. WEINREB: Essentially, we have --

7 THE COURT: You're treating it as together. But what  
8 I'm getting at is the defense may have what are called -- what  
9 we can call sort of affirmative expert evidence in the penalty  
10 phase because it's proposing something, whereas in the guilt  
11 phase the defense is resisting something, and that makes those  
12 experts a little more responsive than affirmative, that's all.  
13 And so it may depend on what the government -- so it may truly  
14 be a response to the government's disclosures that we learn  
15 what the defense intends for the first phase.

16 MR. WEINREB: Indeed that's true, your Honor. But to  
17 the extent that the defense is going to offer affirmative  
18 experts in the penalty phase, we need the same amount of time  
19 pretrial to respond to them as they would need to respond to  
20 us. That's been our point all along, that this is not the  
21 normal kind of case. The defense is going to be putting on  
22 affirmative experts in the penalty phase that are every bit as  
23 much affirmative as the government typically puts on in the  
24 guilt phase. And there's no way to respond to that in the  
25 course of the trial. That's why we picked 90 days from the

1 beginning of trial.

2 THE COURT: I understand that and I generally agree  
3 with it, it's just putting it into the calendar, is really the  
4 question.

5 All right. So we'll work with that.

6 The other -- not the other, because there are two  
7 others. Next is 12.2, the notice and the mechanisms. Now, you  
8 could separate the date for the notice and its contents from  
9 the question of what happens on a subsequent  
10 government-sponsored examination, but it seems you've addressed  
11 both of them in your papers.

12 Let's talk about the contents of the notice. I think  
13 the government has asked not just for a general description of  
14 the areas of expertise and instruments to be used but actually  
15 an identification of experts by name. Is that correct or not?

16 MR. WEINREB: We have asked for that, yes, sir.

17 THE COURT: And I guess the question I have for the  
18 defense is: What's wrong with disclosing the identity of an  
19 expert in addition to his or her field? In other words, how  
20 much difference is there between saying "a forensic  
21 psychiatrist" and "Dr. Smith, a forensic psychiatrist"?

22 MS. CLARKE: Well, I don't -- most courts don't order  
23 that.

24 THE COURT: I know, and I wonder why.

25 MS. CLARKE: And for very good reason. Because that's

1 forcing the defense to provide to the prosecution in advance of  
2 the presentation of that evidence, or a decision even to  
3 present that evidence --

4 THE COURT: But it's not saying anything about the  
5 content; it's just saying who it is.

6 MS. CLARKE: Well, but the government's not entitled  
7 to know who our experts are until we're prepared to actually  
8 put them on. That just doesn't seem to be the procedure that  
9 courts have followed. It's requiring more than the rule  
10 requires.

11 THE COURT: The rule is silent on it.

12 MS. CLARKE: Well, which is notice of the intent to  
13 introduce the evidence.

14 THE COURT: Do you have any objection to the -- what  
15 was required in the Samson case?

16 MS. CLARKE: I'm sorry?

17 THE COURT: Do you have any objection to what Judge  
18 Wolf ordered in the Samson case?

19 MS. CLARKE: I don't recall what Judge --

20 THE COURT: That is, the fields and instruments tests  
21 to be applied.

22 (Counsel confer off the record.)

23 MS. CLARKE: I don't think we have a problem with --  
24 if there's to be a 12.2 notice. And, you know, we're not  
25 there. We don't even know. But if there's to be a notice, it

1 seems fair to say we intend to introduce it. And as to  
2 12.2(b)(1) or (2), right?

3 THE COURT: Right.

4 MS. CLARKE: And what the areas to be covered are: Is  
5 there psychiatric testimony, is there neuropsychological  
6 testimony, you know, that sort of area to give the government  
7 some kind of an indication of what their rebuttal case would  
8 focus on.

9 THE COURT: With respect to the post-notice  
10 proceedings, again, I think it was done in the Samson case, and  
11 the government suggests it here, that another firewall team be  
12 appointed to address issues about the execution of the  
13 examination and anything else that might arise so the  
14 prosecutors here aren't involved in those matters. It seems  
15 for the benefit of the defense, I guess. So I don't know if --

16 MS. CLARKE: I don't think we're inclined to agree to  
17 a firewall or to urge the Court to implement a firewall. The  
18 rule does not envision that. There is a Fifth Amendment shield  
19 which a firewall, you know, doesn't necessarily address. And  
20 it has proved to be a very cumbersome, potentially dangerous  
21 process by communication that goes on anyway between the  
22 experts and the prosecution. It's just -- we have not seen it  
23 work as effectively as the initial impression was.

24 MR. BRUCK: It's contrary to the rule.

25 MS. CLARKE: It's contrary to Rule 12.2.

1 THE COURT: Why is it contrary?

2 MS. CLARKE: Because the rule sets forth the way in  
3 which proceedings occur in 12.2.

4 THE COURT: It's contrary by omission, I guess is what  
5 you're saying?

6 MS. CLARKE: Yes.

7 (Counsel confer off the record.)

8 MS. CLARKE: Mr. Bruck is correct. It specifies that  
9 the information shall not be disclosed to any lawyer for the  
10 government, which a firewall lawyer would be.

11 THE COURT: Right. How would controversies about the  
12 manner of examination be -- legal controversy be resolved if  
13 the government couldn't have a lawyer?

14 MS. CLARKE: I think the process is this: That the  
15 defense provides the notice, the government then seeks an  
16 examination --

17 THE COURT: Right.

18 MS. CLARKE: -- by its expert. And the Court then  
19 will have a hearing on whether that -- what that expert can do.  
20 It is a rebuttal right; it is not an affirmative right of the  
21 government to go tramping around through the government's head.  
22 It's a rebuttal right.

23 So depending on the narrow framing of the defense  
24 notice, the Court would have to make a decision as to how much  
25 testing or what's permitted by the government's expert and

1 whether, in fact, an evaluation is even necessary. We're not  
2 to that point.

3 So there will be a decision point for the judge, for  
4 you, after we file notice and the government then seeks to have  
5 an examination. The government may see our notice and not seek  
6 to have an examination. We may not file any notice. We may  
7 file a notice and they may seek not to have an examination.  
8 They may seek to have an examination broader than our notice.  
9 But we'll have to have a hearing before this Court on what is  
10 permitted.

11 THE COURT: All right. Well, you're right that the  
12 rule contemplates proceeding in steps. And I guess I started  
13 by saying it looked like you're collapsing the steps, but I  
14 think probably it's prudent to just take the first step and  
15 then we'll get the government's motion, which there will be  
16 suggested conditions, which you'll object to, and which we'll  
17 thrash it out.

18 And I guess the final category is reciprocal discovery  
19 under 16(b)(1)(A) and (B), particularly. (C) we've talked  
20 about separately as the expert disclosures. And I guess I have  
21 your submissions about that. So we'll issue an order setting  
22 some dates.

23 Yesterday, I guess, the government filed a motion for  
24 an order of excludable delay that takes us through today. It's  
25 said to be assented to. I assume it is?

1 MS. CLARKE: That's correct.

2 THE COURT: All right. That motion is granted.

3 I guess the next question is we shouldn't leave here  
4 without a further status date.

5 MS. CLARKE: Your Honor, there were, I think -- unless  
6 I just missed it, there are three additional motions on the  
7 list.

8 THE COURT: Right. With regard to the -- I'll rule on  
9 the papers on those.

10 MS. CLARKE: Okay.

11 THE COURT: I think the date we looked at was August  
12 14th. I want to keep in touch with you. That's a status date.  
13 There may be a hearing date between now and then for one thing  
14 or another, or maybe it will be that day. We'll see what gets  
15 filed.

16 MS. CLARKE: At 10 a.m.?

17 THE COURT: Yes. That's a Thursday, I believe.

18 MR. WEINREB: That's good for the government.

19 THE COURT: Okay. Anything else?

20 MR. WEINREB: I guess we would just ask that the  
21 defense consent to the exclusion of time between now and the  
22 next status hearing date.

23 MS. CLARKE: Yes.

24 THE COURT: I think for the same reasons outlined in  
25 the motion just allowed, that's appropriate.



1 MR. WEINREB: Yes.

2 MS. CLARKE: Thank you, your Honor.

3 THE COURT: Okay. Thank you.

4 THE CLERK: All rise for the Court.

5 (The Court exits the courtroom at 10:36 a.m.)

6 THE CLERK: Court will be in recess.

7 (The proceedings adjourned at 10:36 a.m.)

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## C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso  
MARCIA G. PATRISSE, RMR, CRR  
Official Court Reporter

Date: 7/18/14